

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN - 5 2019

MITCHELL R. ELFERS
CLERK

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**UNITED STATES DISTRICT COURT
FOR THE NEW MEXICO DISTRICT**

COMPLAINT

No.: 19 CV 515 JFR/LF

Peter Strojnik

Plaintiff,

vs.

Heritage Hotels and Resorts, Inc dba Hotel
Chaco

Defendant.

1. Americans with Disabilities Act

2. Negligence and/or negligence
per se

COMPLAINT

1. Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design ("ADAAG"), and (2) common law of negligence and/or negligence per se.

PARTIES

2. Plaintiff Peter Strojnik is a veteran and a disabled person as defined by the ADA.
3. Plaintiff is a single man currently residing in Maricopa County, Arizona. Plaintiff is and, at all times relevant hereto has been, legally disabled by virtue of a severe right-sided neural foraminal stenosis with symptoms of femoral neuropathy, prostate cancer and renal cancer, degenerative right knee and arthritis and is therefore a member of a protected class under the ADA.

- 1 4. Plaintiff suffers from physical impairments described above which impairments
- 2 substantially limit his major life activities. Plaintiff walks with difficulty and pain
- 3 and requires compliant mobility accessible features at places of public
- 4 accommodation. Plaintiff's impairment is constant, but the degree of pain is episodic
- 5 ranging from dull and numbing pain to extreme and excruciating agony.
- 6 5. Plaintiff is retired and likes to spend his retirement years traveling the United States.
- 7 6. Defendant, owns, operates leases or leases to a lodging business ("Hotel") located at
- 8 2000 Bellamah Ave., NW, Albuquerque, NM 87104 which is a public accommodation
- 9 pursuant to 42 U.S.C. § 12181(7)(A).

JURISDICTION

- 10 7. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§
- 11 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.
- 12 8. Plaintiff brings this action as a private attorney general who has been personally
- 13 subjected to discrimination on the basis of his disability, *see* 42 U.S.C. §12188 and
- 14 28 CFR §36.501.
- 15 9. This Court has continuing subject matter jurisdiction by virtue of, *inter alia*,
- 16 Plaintiff's claim for equitable nominal damages.
- 17 10. Venue is proper pursuant to 28 U.S.C. § 1391.
- 18 11. The ADAAG violations in this Verified Complaint relate to barriers to Plaintiffs
- 19 mobility. This impairs Plaintiff's full and equal access to the Hotel which, in turn,
- 20 constitutes discrimination satisfying the "injury in fact" requirement of Article III of
- 21 the United States Constitution.
- 22 12. Plaintiff has been denied equal access to Hotel's accommodations by failure of the
- 23 Hotel to comply with 28 CFR §36.302(a) and (e) which provide, in relevant part:
- 24 (a) *General.* A public accommodation shall make reasonable modifications
- 25 in policies, practices, or procedures, when the modifications are
- 26 necessary to afford goods, services, facilities, privileges, advantages, or
- 27 accommodations to individuals with disabilities, unless the public
- 28 accommodation can demonstrate that making the modifications would
- fundamentally alter the nature of the goods, services, facilities, privileges,
- advantages, or accommodations.

(e) (1) *Reservations made by places of lodging.* A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party—

(i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;

(ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;

(iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;

(iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and

(v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

13. Plaintiff intends to visit Defendant's Hotel at a specific time when the Defendant's noncompliant Hotel becomes fully compliant with ADAAG.

COUNT ONE

Violation of Plaintiff's Civil Rights under the ADA

14. Plaintiff realleges all allegations heretofore set forth.

15. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

16. Plaintiff intended to visit Albuquerque and therefore, reviewed vacation booking websites as documented in Addendum A which is by this reference incorporated herein for all purposes.

17. Plaintiff consulted booking websites and noted that the booking websites failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to

1 assess independently whether Defendant's Hotel meets his accessibility needs as more
2 fully documented in Addendum A.

3 18. Plaintiff also personally reviewed the condition of Defendant's compliance with
4 ADAAG as advertised on Defendant's 3rd and 1st party booking advertisements and
5 noted the deficiencies documented in Addendum A.

6 19. Defendant has violated the ADA by denying Plaintiff equal access to its public
7 accommodation on the basis of his disability as outlined above and as outlined in
8 Addendum A.

9 20. The ADA violations described in Addendum A relate to Plaintiff's disability and
10 interfere with Plaintiff's full and complete enjoyment of the Hotel.

11 21. As a result of the deficiencies described above, Plaintiff declined to book a room at
12 Defendant's Hotel.

13 22. The removal of accessibility barriers listed above is readily achievable.

14 23. As a direct and proximate result of ADA Violations, Defendant's failure to remove
15 accessibility barriers prevented Plaintiff from equal access to the Defendant's public
16 accommodation.

17 **WHEREFORE**, Plaintiff prays for all relief as follows:

18 A. Relief described in 42 U.S.C. §2000a – 3; and

19 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -

20 C. Injunctive relief order to alter Defendant's place of public accommodation to
21 make it readily accessible to and usable by ALL individuals with disabilities;
22 and

23 D. Requiring the provision of an auxiliary aid or service, modification of a
24 policy, or provision of alternative methods, to the extent required by
25 Subchapter III of the ADA; and

26 E. Equitable nominal damages; and

27 F. For costs, expenses and attorney's fees; and

28 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

COUNT TWO

Negligence and/or negligence per se

1 24. Plaintiff realleges all allegations heretofore set forth.

2 25. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that Plaintiff
3 as a disabled individual would have full and equal access to the public
4 accommodation.

5 26. Defendant breached this duty.

6 27. Defendant is or should be aware that, historically, society has tended to isolate and
7 segregate individuals with disabilities, and, despite some improvements, such forms
8 of discrimination against individuals with disabilities continue to be a serious and
9 pervasive social problem¹.

10 28. Defendant knowingly and intentionally participated in this historical discrimination
11 against Plaintiff, causing Plaintiff damage.

12 29. Discrimination against individuals with disabilities persists in the use and enjoyment
13 of critical public accommodations².

14 30. Defendant's knowing and intentional persistence in discrimination against Plaintiff
15 and similarly situated persons caused Plaintiff damage by preventing him from
16 lodging at Defendant's Hotel.

17 31. Individuals with disabilities, including Plaintiff, continually encounter various forms
18 of discrimination, including outright intentional exclusion, the discriminatory effects
19 of architectural, overprotective rules and policies, failure to make modifications to
20 existing facilities and practices, exclusionary qualification standards and criteria,
21 segregation, and relegation to lesser services, programs, activities, benefits, jobs, or
22 other opportunities³.

23 32. Defendant's knowing and intentional discrimination against Plaintiff reinforces above
24 forms of discrimination, causing Plaintiff damage.

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28 ¹ 42 U.S.C. § 12101(a)(2)

² 42 U.S.C. § 12101(a)(3)

³ 42 U.S.C. § 12101(a)(5)

1 33. Census data, national polls, and other studies have documented that people with
2 disabilities, as a group, occupy an inferior status in our society, and are severely
3 disadvantaged socially, vocationally, economically, and educationally⁴.

4 34. Defendant's knowing and intentional discrimination has relegated Plaintiff to an
5 inferior status in society, causing Plaintiff damage.

6 35. The Nation's proper goals regarding individuals with disabilities are to assure equality
7 of opportunity, full participation, independent living, and economic self-sufficiency
8 for such individuals⁵.

9 36. Defendant's knowing, and intentional discrimination has worked counter to our
10 Nation's goals of equality, causing Plaintiff damage.

11 37. Continued existence of unfair and unnecessary discrimination and prejudice denies
12 people with disabilities the opportunity to compete on an equal basis and to pursue
13 those opportunities for which our free society is justifiably famous, and costs the
14 United States billions of dollars in unnecessary expenses resulting from dependency
15 and nonproductivity⁶.

16 38. Defendant's knowing and intentional unfair and unnecessary discrimination against
17 Plaintiff demonstrates Defendant's knowing and intentional damage to Plaintiff.

18 39. Defendant's breach of duty caused Plaintiff damages including, without limitation,
19 the feeling of segregation, discrimination, relegation to second class citizen status the
20 pain, suffering and emotional damages inherent to discrimination and segregation and
21 other damages to be proven at trial.

22 40. According to New Mexico common law, punitive damages serve two important
23 policy objectives under our state common law: to punish reprehensible conduct
24 and to deter similar conduct in the future⁷.

24 ⁴ 42 U.S.C. §12101(a)(6)

25 ⁵ 42 U.S.C. §12101(a)(7)

26 ⁶ 42 U.S.C. §12101(a)(8)

27 ⁷ *Bogle v. Summit Inv. Co.*, 137 N.M. 80, 107 P.3d 520 (NMCA 2005). These objectives
28 are of critical importance in the ADA context where Plaintiffs have no monetary
recourse other than the imposition of equitable nominal damages under the ADA and
where compensatory damages may be *de minimis* or difficult to quantify under
negligence law. *Akins v. United Steel Workers, AFL-CIO, CLC Local 187*, 148 NM.

1 41. By violating Plaintiff's civil rights, Defendant engaged in intentional, aggravated and
2 outrageous conduct.

3 42. The ADA has been the law of the land since 1991, but Defendant engaged in a
4 conscious action of a reprehensible character, that is, Defendant denied Plaintiff his
5 civil rights, and cause him damage by virtue of segregation, discrimination, relegation
6 to second class citizen status the pain, suffering and emotional damages inherent to
7 discrimination and segregation and other damages to be proven at trial.

8 43. Defendant either intended to cause injury to Plaintiff or defendant consciously
9 pursued a course of conduct knowing that it created a substantial risk of significant
10 harm to Plaintiff.

11 44. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial
12 sufficient, however, to deter this Defendant and others similarly situated from
13 pursuing similar acts.

14 **WHEREFORE**, Plaintiff prays for relief as follows:

15 A. For finding of negligence and/or negligence per se; and

16 B. For damages in an amount to be proven at trial; and

17 C. For punitive damages to be proven at trial; and

18 D. For such other and further relief as the Court may deem just and proper.

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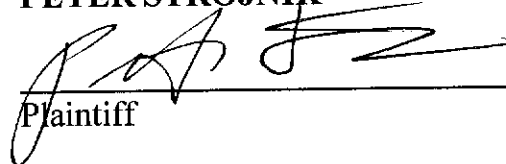
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23 442, 237 P.3d 744 (NM 2010). *See also* Sanchez v. Clayton, 117 N.M. 761, 767, 877
24 P.2d 567, 573 (1994) ("Indeed, if the defendant's conduct otherwise warrants punitive
25 liability, the need for punishment or deterrence may be increased by reason of the very
26 fact that the defendant will have no liability for compensatory damages." (citing 1 Dan B.
27 Dobbs, Law of Remedies § 3.11(10), at 515-16 (2d ed. 1993))). The present case is
28 illustrative where a compensatory award against the Hotel may be de minimis or difficult
to quantify. *Compare* with *Akins*, "The present case is illustrative; a compensatory
award against the Union of a mere \$1,661 would hardly deter similar outrageous
conduct against other Union members in the future."

REQUEST FOR TRIAL BY JURY

Plaintiff respectfully requests a trial by jury in issues triable by a jury.

DATED this 3rd day of June 2019.

PETER STROJNIK



Plaintiff

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ADDENDUM A

3RD PARTY BOOKING WEBSITE – GENERAL ACCESSIBILITY
INFORMATION

www.hotels.com

Hotel Chaco

2000 Bellamah Avenue Northwest, Albuquerque, NM, 87104, United States, 800-573-4235

**4-star****Albuquerque**

- 1.9 mile to City center
- 4.5 miles to Albuquerque International Sunport (ABQ)

Collect nights

Loved by guests

Exceptional 9.6

238 Hotels.com guest reviews



360 reviews

Main amenities

- ✓ 118 smoke-free guestrooms
- ✓ Restaurant
- ✓ Outdoor pool
- ✓ Fitness center
- ✓ Business center
- ✓ 24-hour front desk
- ✓ Air conditioning
- ✓ Daily housekeeping
- ✓ Concierge services
- ✓ Free WiFi

At a glance**Key facts****Hotel size**

- This hotel has 118 rooms

Arriving/leaving

97% of customers were happy with check-in

- Check-in time starts at 4 PM
- Check-out time is noon

Required at check-in

- Credit card or cash deposit required
- Government-issued photo ID required
- Minimum check-in age is 21

In the hotel

Food and drink	Restaurant	Room service (during limited hours)	
Things to do	Outdoor pool	Fitness facilities	Spa tub
	Yoga classes/instruction on site		
Working away	Business center		
Services	24-hour front desk	Concierge services	

In the room

Home comforts	Air conditioning	Bathrobes		
Sleep well	Turndown service	Premium bedding		
Freshen up	Private bathroom	Rainfall showerhead	Shower only	Free toiletries
	Hair dryer			
Be entertained	Flat-screen TV	Cable TV channels		
Stay connected	Desk	Free WiFi		
Food and drink	Refrigerator	Free bottled water		
More	Daily housekeeping	In-room safe (laptop compatible)		

Special features**Dining**

Equinox Cafe and Bar - Onsite lobby lounge.

Hotel Chaco, Albuquerque's small print**Also known as**

- Hotel Chaco Albuquerque
- Chaco Albuquerque

Policies

Pet-friendly rooms can be requested by contacting the property at the number on the booking confirmation.

Mandatory fees

You'll be asked to pay the following charges at check in or check out:

- Resort fee: USD 30.0 per accommodation, per night

Resort fee inclusions:

- Pool access
- Spa tub access
- Fitness center access
- Fitness/yoga classes
- Business center/computer access
- Internet access (may be limited)
- Newspaper
- In-room safe
- In-room coffee
- In-room bottled water
- Concierge/valet service
- Valet parking
- Parking
- See list

Inclusions may be listed elsewhere on the page as free or for a surcharge.

Optional extras

Pets are allowed for an extra charge of USD 50.00 per pet, per stay

Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail

to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

3RD PARTY BOOKING WEBSITE – ROOM DESCRIPTIONS

Classic Room, 1 King Bed

Sleeps 2 people (including up to 1 child)

Bed choices

- 1 King Bed

More info: 888-539-8117

1 King Bed

Internet - Free WiFi

Entertainment - Flat-screen TV with cable channels

Food & Drink - Refrigerator, room service, and free bottled water

Sleep - Premium bedding and turndown service

Bathroom - Private bathroom, bathrobes, and a shower with a rainfall showerhead

Practical - Laptop-compatible safe and desk

Comfort - Air conditioning and daily housekeeping

Non-Smoking

Room Details

- | | | |
|----------------------|------------------------------------|--------------------------------|
| • Air conditioning | • Free toiletries | • Private bathroom |
| • Bathrobes | • Free WiFi | • Rainfall showerhead |
| • Cable TV service | • Hair dryer | • Refrigerator |
| • Daily housekeeping | • In-room safe (laptop compatible) | • Room service (limited hours) |
| • Desk | • Number of bathrooms - 1 | • Shower only |
| • Flat-panel TV | • Premium bedding | • Turndown service |

Classic Room, 1 King Bed, Balcony

Sleeps 2 people (including up to 1 child)

Bed choices

- 1 King Bed

More info: 888-539-8117

1 King Bed

Internet - Free WiFi

Entertainment - Flat-screen TV with cable channels

Food & Drink - Refrigerator, room service, and free bottled water

Sleep - Premium bedding and turndown service

Bathroom - Private bathroom, bathrobes, and a shower with a rainfall showerhead

Practical - Laptop-compatible safe and desk

Comfort - Air conditioning and daily housekeeping

Non-Smoking

Room Details

- | | | |
|----------------------|------------------------------------|--------------------------------|
| • Air conditioning | • Free toiletries | • Private bathroom |
| • Bathrobes | • Free WiFi | • Rainfall showerhead |
| • Cable TV service | • Hair dryer | • Refrigerator |
| • Daily housekeeping | • In-room safe (laptop compatible) | • Room service (limited hours) |
| • Desk | • Number of bathrooms - 1 | • Shower only |
| • Flat-panel TV | • Premium bedding | • Turndown service |

Deluxe Room, 1 King Bed**Sleeps 4 people (including up to 3 children)****Bed choices**

- 1 King Bed

More info: 888-539-8117

1 King Bed**Internet** - Free WiFi**Entertainment** - Flat-screen TV with cable channels**Food & Drink** - Refrigerator, room service, and free bottled water**Sleep** - Premium bedding and turndown service**Bathroom** - Private bathroom, bathrobes, and a shower with a rainfall showerhead**Practical** - Laptop-compatible safe and desk**Comfort** - Air conditioning and daily housekeeping

Non-Smoking

Room Details

- Air conditioning
- Bathrobes
- Cable TV service
- Daily housekeeping
- Desk
- Flat-panel TV
- Free bottled water
- Free toiletries
- Free WiFi
- Hair dryer
- In-room safe (laptop compatible)
- Number of bathrooms - 1
- Premium bedding
- Private bathroom
- Rainfall showerhead
- Refrigerator
- Room service (limited hours)
- Shower only
- Turndown service

Classic Room, 2 Queen Beds, Balcony**Sleeps 4 people (including up to 3 children)****Bed choices**

- 2 Queen Beds

More info: 888-539-8117

2 Queen Beds**Internet** - Free WiFi**Entertainment** - Flat-screen TV with cable channels**Food & Drink** - Refrigerator, room service, and free bottled water**Sleep** - Premium bedding and turndown service**Bathroom** - Private bathroom, bathrobes, and a shower with a rainfall showerhead**Practical** - Laptop-compatible safe and desk**Comfort** - Air conditioning and daily housekeeping

Non-Smoking

Room Details

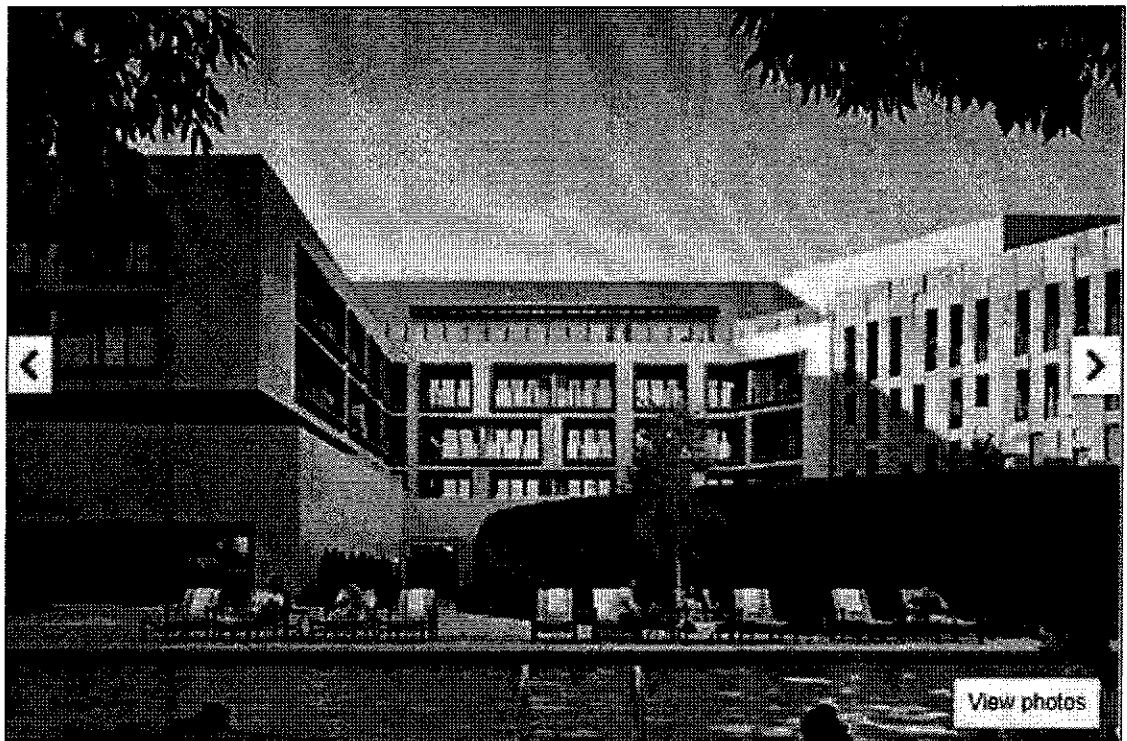
- Air conditioning
- Bathrobes
- Cable TV service
- Daily housekeeping
- Desk
- Flat-panel TV
- Free bottled water
- Free toiletries
- Free WiFi
- Hair dryer
- In-room safe (laptop compatible)
- Number of bathrooms - 1
- Premium bedding
- Private bathroom
- Rainfall showerhead
- Refrigerator
- Room service (limited hours)
- Shower only
- Turndown service

Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs. Insufficient description of dispersion of accessible rooms among various categories of rooms.

3RD PARTY BOOKING WEBSITE - PHOTOS



No Marked Passenger Drop Off Zone



Inaccessible Pool – No Lift

**1ST PARTY BOOKING WEBSITE - GENERAL ACCESSIBILITY
INFORMATION**

<https://www.hotelchaco.com>

NO ACCESSIBILITY INFORMATION

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ACCESSIBILITY

SEARCH

SEARCH

Enter your keywords ACCESSIBILITY SEARCH

YOUR SEARCH YIELDED NO RESULTS


- Check if your spelling is correct.
- Remove quotes around phrases to search for each word individually. *bike shed* will often show more results than *"bike shed"*.
- Consider loosening your query with *OR*. *bike OR shed* will often show more results than *bike shed*.

Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs.

1ST PARTY BOOKING WEBSITE –ROOM DESCRIPTIONS

Identification of Specific Barrier in Plain Language: Booking website does not identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his accessibility needs. Insufficient description of dispersion of accessible rooms among various categories of rooms.

3D PARTY PHOTOS





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11 **No Pool Lift – No Spa Lift**

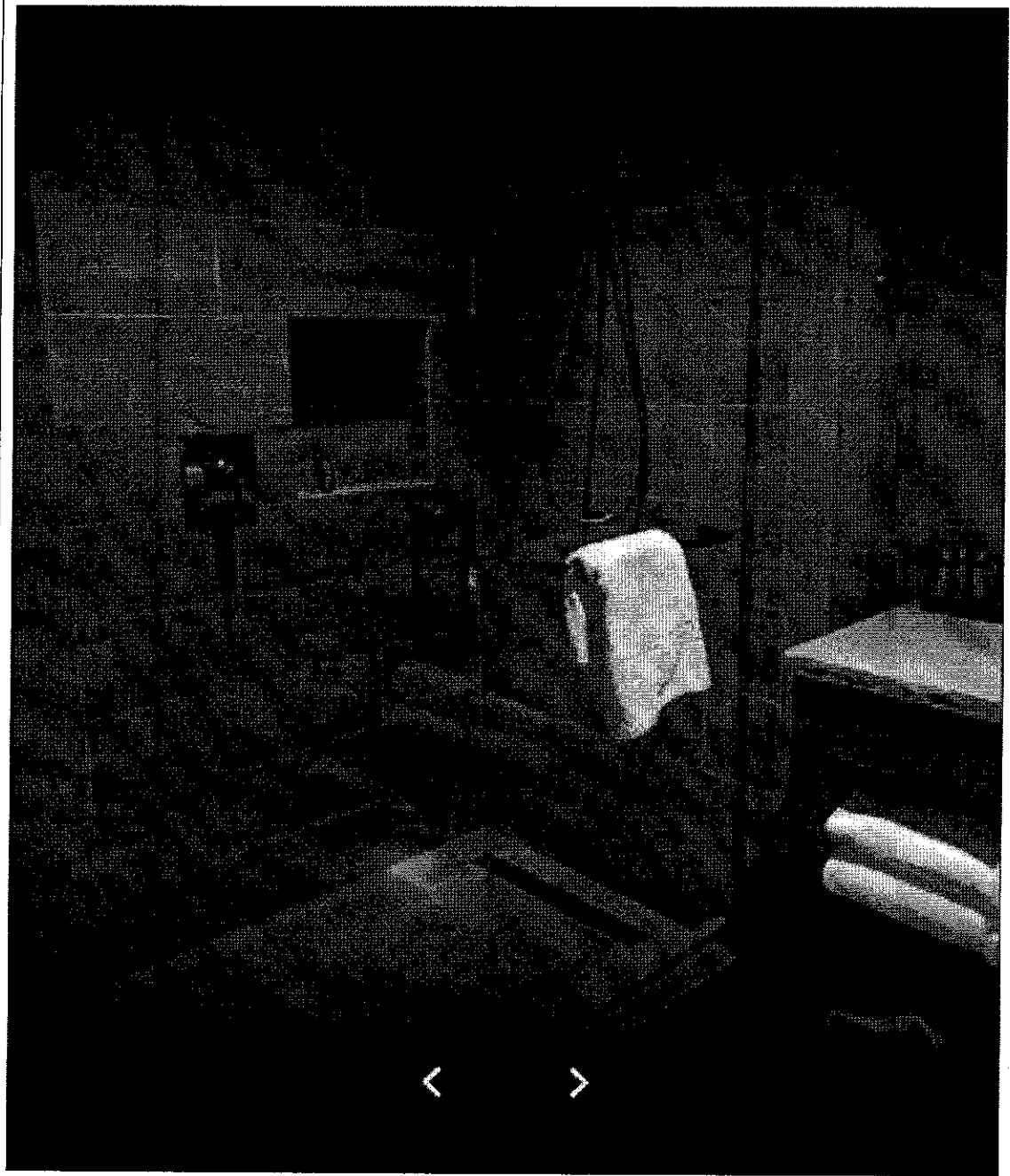


18 **Inaccessible Bar**

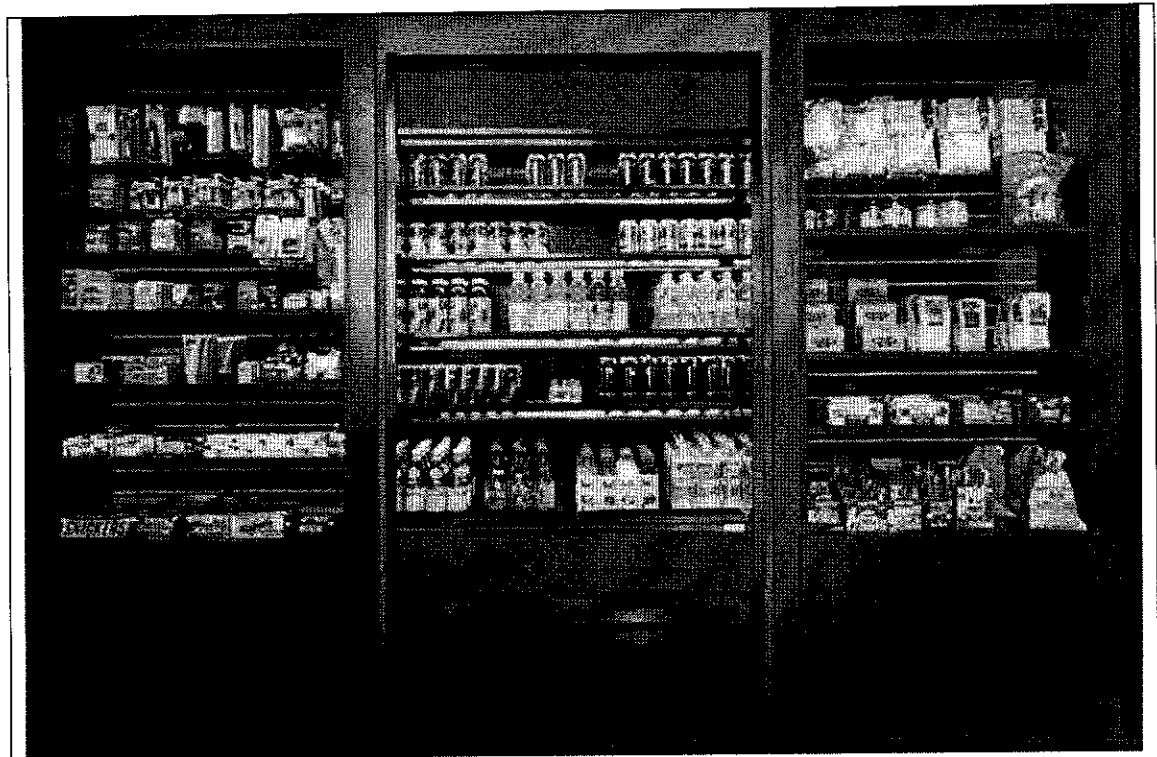


Inaccessible Bathroom

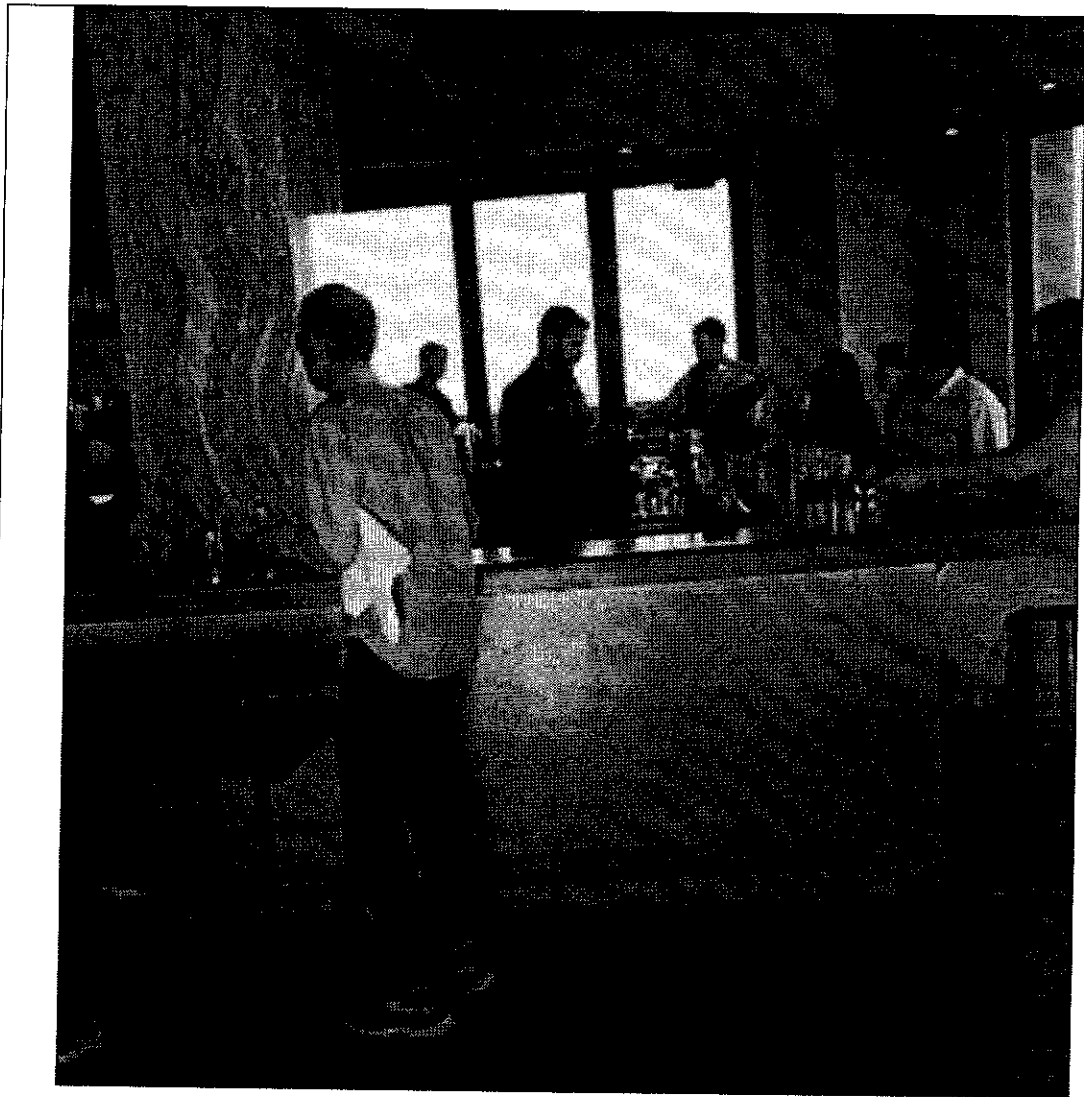
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Inaccessible Shower Stall

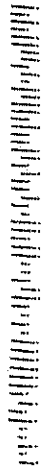


Inaccessibe Vending



Inaccessible Bar

END



U.S. POSTAGE & PAYMENT SERVICE
ZIP 0028 \$ 002.20⁰
02 JUN 03 2019
0001394369 JUN 03 2019

Peter Strojnik
7847 N. Central Avenue
Phoenix, Arizona 85020

RECEIVED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUN 05 2019

MITCHELL R. ELFERS
CLERK

US District Court Clerk's Office
District of New Mexico
Pete V. Domenici U.S. Courthouse
333 Lomas Blvd NW, Suite 270
Albuquerque, NM 87102